

# RESEARCH MATTERS

## *News from the Senate Research Center*

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### **United States Supreme Court Upholds Constitutionality of “Megan’s Law”**

“Megan’s Law” is the popular name for laws requiring the registration of sex offenders and notification of law enforcement officials or communities. Megan Kanka, a seven-year-old New Jersey girl, was sexually assaulted and murdered in 1994 by a neighbor with prior convictions for sex offenses, and her death was the impetus for such laws. In 1994, Congress passed legislation that conditioned certain federal law enforcement funding on the states’ adoption of sex offender registration laws, setting minimum standards for such programs. By 1996, every state had enacted some variation of Megan’s Law.

On March 5, 2003, the United States Supreme Court upheld the Megan’s Laws in Alaska and Connecticut. The supreme court’s decisions, especially the decision upholding Alaska’s tough registration and notification law, give assurance that similar provisions in Texas’ Sex Offender Registration Program under Chapter 62 of the Code of Criminal Procedure would survive constitutional challenge.

**Alaska:** The Alaska Sex Offender Registration Act (Act) is considered one of the most stringent in the nation because its registration and verification requirements apply to people who were convicted before the law was enacted and make the offender’s picture, home address, work address, and car tags available on the Internet. In Smith and Bothelho v. John Doe I, et al., Alaska’s Act was challenged by two persons who had been convicted of sex offenses before the passage of the state law but were still required to register as sex offenders. They asserted that the Act, as applied to them, was an ex post facto law, which is prohibited by the United States Constitution. An ex post facto law is a penal law that: punishes as a crime an act already committed that was not considered criminal at the time it occurred; increases the punishment for a crime after the crime was committed; or deprives a person of a defense that was available at the time of the offense.

Under the Act, every sex offender must register with the state and provide extensive personal information. Offenders must also permit the authorities to photograph and fingerprint them. Depending on the severity of the offense, the offender must provide annual verification of the information for 15 years or must register for life, verifying the information quarterly. A sex offender who knowingly fails to comply with the Act is subject to criminal



“Although the public availability of the information may have a lasting and painful impact on the convicted sex offender, these consequences flow not from the Act’s registration and dissemination provisions, but from the fact of conviction, already a matter of public record. The State makes the facts underlying the offenses and the resulting convictions accessible so members of the public can take the precautions they deem necessary before dealing with the registrant.”

— *Smith v. Doe, United States Supreme Court*

prosecution. The Alaska Department of Public Safety maintains a central registry of sex offenders. Some of the data, such as fingerprints and driver's license numbers, are kept confidential. However, the following information is made public and is available on the Internet: the offender's name, aliases, address, photograph, physical description, identification of motor vehicles, place of employment, date of birth, crime for which convicted, date of conviction, place and court of conviction, and length and conditions of sentence, along with a statement as to whether the offender is in compliance with the registration requirements or cannot be located.

In a six-to-three decision, the majority found that it was not the intent of the law to impose further punishment, which would be unconstitutional. Instead, the majority held that the legislature's intention was to enact a civil, nonpunitive regulatory scheme designed to protect the public from harm. However, even if the legislature intended to create a civil, nonpunitive regime, a law may be unconstitutional if its effect is punitive. Factors used in analyzing whether a civil law has an unconstitutional punitive effect include whether the act in question has been historically considered a punishment, imposes an affirmative disability or restraint, promotes the traditional aims of punishment, or is excessive and overbroad in relation to its nonpunitive purpose. The majority found that the Alaska law did not have a punitive effect. The purpose of notification, the majority held, was to inform the public for its own safety, not to punish and humiliate the offender. The majority emphasized that much of the information regarding an offender's history is already public record; any adverse consequences to the offender flow from the fact of the conviction, which is already in the public record, not the registration and notification requirements of the law. The majority

also ruled that the scope of the law was rationally related to the state's legitimate, nonpunitive purpose of public safety, which is advanced by alerting the public to the risk of sex offenders in their community.

**Connecticut.** The Fourteenth Amendment of the federal constitution bars states from depriving persons of life, liberty, or property without due process of law (Due Process Clause). In Connecticut Department of Public Safety, et al. v. John Doe, a convicted sex offender challenged

Connecticut's registration and notification law on the grounds that it violated his right to due process by depriving him of a liberty interest, his reputation combined with his status under state law, without notice or a meaningful opportunity for a hearing. He asserted that due process required the state to hold a hearing to first determine whether he was still a dangerous sex offender. A unanimous supreme court stated that mere injury to reputation, even if defamatory, does not constitute the deprivation of a liberty interest. Also, the court ruled, in order to assert a right to a hearing under the Due Process Clause, the



respondent must show that the fact he seeks to establish in a hearing (that he is not a dangerous sex offender) is relevant under the statutory scheme. The requirements of Connecticut's law are not based on current dangerousness, but on an offender's conviction alone. No other fact, stated the court, is relevant to the disclosure of the registrant's information. Therefore, whether or not the respondent is currently dangerous is not relevant to the statutory scheme, and the respondent is not entitled to a hearing.

— by Sharon Hope Weintraub, SRC